

**State Board of Equalization**  
**OPERATIONS MEMO**  
For Public Release

No: 1107  
Date: June 3, 2004  
Revised: September 25, 2006

**SUBJECT: Relief of Interest Due to Unreasonable Error or Delay by a Board Employee**

**I. GENERAL**

With the passage of Assembly Bill (AB) 1123 (Stats. 2001, Ch. 251), the Board of Equalization (Board) has the authority to grant relief of all or any part of interest imposed provided the reason for late payment is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity. Additionally, if the failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles (DMV) was the direct result of an error by the DMV in calculating the use tax, interest may be relieved. No significant aspect of the error or delay can be attributable to an act of, or a failure to act by, the tax or fee payer. Any person seeking relief under this legislation shall file with the Board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the Board may require. Interest may be relieved only on tax liabilities that arise during taxable periods commencing on or after the effective date shown below for each tax or fee program. Any references to the tax or fee payer in this memorandum include an employee or other authorized representative of the tax or fee payer.

The following statutes were amended to provide for relief of interest under the conditions specified above:

Law	Statute	Effective Date
Sales and Use Tax	6593.5	7/1/99
Motor Vehicle Fuel Tax	7658.1	1/1/00
Use Fuel Tax	8878.5	1/1/00
Private Railroad Car Tax	11409	1/1/00
Cigarette and Tobacco Products Tax	30283.5	1/1/00
Alcoholic Beverage Tax	32256.5	1/1/00
Timber Yield Tax	38455	1/1/00
Energy Resources Surcharge	40103.5	1/1/00
Emergency Telephone Users Surcharge	41097.5	1/1/00
Hazardous Substances Tax	43158.5	1/1/00
Integrated Waste Management Fee	45156.5	1/1/00
Oil Spill Response, Prevention, and Administration Fees	46157.5	1/1/00

Underground Storage Tank Maintenance Fee	50112.4	1/1/00
Fee Collection Procedures	55046	1/1/00
Diesel Fuel Tax	60212	1/1/00

The provisions of this Operations Memo do not apply to situations in which a tax or fee payer is requesting relief from interest due to a disaster. A disaster would include fire, flood, storm, tidal wave, earthquake or similar public calamity, whether or not resulting from natural causes. A tax or fee payer seeking relief under these circumstances should be referred to Publication 75, *Interest and Penalties*, and use form BOE-27, *Penalty and Interest Relief for Disaster Victims*.

## **II. REPORTING REQUIREMENTS**

### **A. Form BOE-735-A, Request For Relief of Interest - Unreasonable Error or Delay**

The form BOE-735-A is available for tax or fee payers to use when requesting relief from interest charges they believe to be caused by an unreasonable error or delay by a Board employee. The use of this form is not required but it is recommended. All requests for relief of interest under the sections referenced above must be in writing, signed under penalty of perjury, and include the following:

1. The tax or fee payer's name and account number.
2. The period covered by the relief of interest request and the dollar amount.
3. A description of the unreasonable error or delay by a Board employee acting in his or her official capacity (with documentation if available).
4. A statement that no significant aspect of the unreasonable error or delay is attributable to an action, or failure to act, by the tax or fee payer (with documentation if available).
5. If applicable, a statement explaining how the failure to pay tax on a vehicle or vessel registered with DMV was the direct result of an error by DMV in calculating the use tax.

### **B. Guidelines for Consideration of Interest Relief**

The Board may relieve all or a portion of interest charges under certain conditions. Only the interest attributable to the unreasonable error or delay by a Board employee acting in his or her official capacity or a miscalculation of use tax by DMV is eligible for relief under the law sections referenced above. Requests must set forth the facts on which the claim for relief is based and any other information the Board may require.

Although each request for relief of interest should be evaluated on its own merits, the following guidelines may assist staff in determining if an unreasonable error or delay has occurred. Circumstances that may be considered unreasonable and, therefore, qualify for consideration of relief of interest include, but are not limited to, the following:

1. The auditor is on sick leave for an extended period, or leaves the Board, and the audit is not timely reassigned resulting in an unreasonable delay.
2. A Board employee misplaces the audit work papers or case files, causing the Board to reconstruct data or require the tax or fee payer to provide information a second time. This could be considered an unreasonable delay in the audit.
3. The Board sends mail to a tax or fee payer's address of record. Our records are incorrect or incomplete due to a data entry error or a failure to timely enter an address change submitted by the tax or fee payer. As a result, the tax or fee payer does not timely respond.
4. An act, or failure to act, by Board staff caused an unusual delay in registering the tax or fee payer.
5. A tax or fee payer failed to file a timely return or payment due to their reliance on erroneous documented verbal advice from the Board (e.g., the due date of a return or payment). Documentation of verbal advice might include the BOE-11, *File Memo on Inquiry* or notations in IRIS or ACMS. (Note: Incorrect written advice may qualify for cancellation of liability, and therefore interest charges, under other law sections.)
6. An account is closed out in error by Board staff. Consequently, the tax or fee payer is not sent tax returns and fails to pay the taxes or fees when due. This would not include accounts closed due to apparent inactivity caused by the failure of the tax or fee payer to notify the Board of an address change.
7. The Board mails a billing for the collection of a fee based on information provided by another agency and that information was incorrect. The re-billing of the corrected fee may result in an unreasonable error or delay.

Circumstances that would not qualify for consideration of relief of interest include, but are not limited to, the following:

1. A delay resulting from regulatory or policy changes being considered by the Board.
2. If an audit involves complex issues and/or an extensive examination is needed, the additional time required does not constitute an unreasonable delay. A subsequent appeal might also require additional time and not be regarded as unreasonable.
3. Timely seeking written clarification of statute or policy from Board management or other sections where such clarification is provided in a reasonable time.
4. The tax or fee payer fails to timely notify the Board of a change in address.
5. Failure of a business to register with the Board in a timely manner, or a registration delay caused by the tax or fee payer's failure to timely provide required information and/or documentation.
6. Failure or delay of a control agency, or agency requiring a related federal license (Federal Aviation Administration and the United States Coast Guard), or agency acting as the Board's agent (Department of Motor

Vehicles and the Department of Housing and Community Development), or other third party, to inform the taxpayer of the need to register with the Board or to provide that information to the Board. The resulting delay in the Board's assessment is not an unreasonable delay.

7. Normal processing often involves the establishment of criteria or guidelines to identify items that require further investigation including a review and adjustment of all periods within the statute of limitations. This, by itself, would not be considered an unreasonable delay.
8. A billing for the failure to pay-in-full a self-assessed tax liability is issued within the statute of limitations. This includes, but is not limited to, instances where the tax or fee payer fails to remit payment with a return, where the tax or fee payer remits only a portion of the tax due, or where the remittance is returned unpaid by the tax or fee payer's financial institution. In these instances, the tax or fee payer is fully aware of the liability owed to the state.
9. If DMV calculates the use tax because the taxpayer fails to present a bill of sale, any resulting understatement of the actual sales price is not an unreasonable error.

### **C. Processing Relief Requests over \$50,000**

A comprehensive analysis of each case is required and the evidence to support relief of interest must be convincing. Copies of documentary evidence should be provided whenever possible. Within thirty days of receiving the tax or fee payer's interest relief request, a memo recommending approval or denial of the request should be prepared by the division, section, or district office supervisor for the area where the alleged error or delay occurred. The recommendation shall be sent to the appropriate Deputy Director and include at a minimum:

- Tax or fee payer's name and account number.
- Summary of the tax or fee payer's reason for requesting relief of interest including:
  - the measure on which relief is based,
  - the tax period involved,
  - the interest from/to dates, and
  - the dollar amount of relief being requested.
- Division, section, or district office summary of the circumstances involved including:
  - the facts as determined by review leading to the recommendation to approve or deny,
  - a copy of the tax or fee payer's interest relief request signed under penalty of perjury,
  - a statement, if appropriate, that it was not possible to prove or disprove the tax or fee payer's position, and
  - copies of any available documentation to support the recommendation. If no documentation is available, this should be stated.
- Division, section, or district office recommendation to approve or deny the request.

- If the recommendation is to approve the request, provide information on the corrective steps taken to prevent the unreasonable error or delay from recurring.
- Name and signature of the supervisor making the recommendation.

Recommendations for relief of interest under section 6593.5 are reviewed by the Audit Support Unit (ASU). All other recommendations are reviewed by the appropriate PSTD Division Chief. An Executive Summary for Action is prepared by ASU, or PSTD Division Chief, and submitted to the appropriate Deputy Director. The Deputy Director reviews each recommendation to ensure consistent application of the law and to determine if further corrective action is required to prevent recurrence of the unreasonable error or delay. After this review, the request will be submitted to the Board Members for consideration. Their decision will be relayed to the supervisor submitting the relief request who will verify any required adjustments to the liability are made and notify the tax or fee payer of the decision.

#### **D. Processing Relief Requests between \$5,001 and \$50,000**

On January 27, 2004, the Board Members approved a delegation of authority for relief of interest to the Deputy Director Sales and Use Tax Department and the Deputy Director Property and Special Taxes Department (PSTD), or their designees. This delegation applies to relief of interest requests for \$50,000 or less. The procedures stated above for requests over \$50,000 will be followed for relief of interest requests between \$5,001 and \$50,000 except that the appropriate Deputy Director will make the final decision.

#### **E. Processing Relief Requests for \$5,000 or Less**

##### Sales and Use Tax Department (SUTD)

The Deputy Director, Sales and Use Tax Department delegated the authority to approve or deny requests of \$5,000 or less to the following designees:

- District Administrators
- Administrator, Return Analysis and Allocation Section
- Administrator, Centralized Collection Section
- Supervisor, Consumer Use Tax Section (CUTS), and
- Supervisor, Audit and Information Section (AIS)

The designees identified above will make the decision to grant or deny relief in their area of responsibility, notify the taxpayer, and make or request the necessary updates to the IRIS system. Interest relief requests on consumer use tax accounts impacted by alleged errors made by DMV will be processed by CUTS. Other cases where the area responsible for the error or delay is not supervised by the first four designees listed above will be processed by AIS.

On a calendar year basis, the Board Members are provided with a summary of relief requests considered under this section. Since the designees will be called upon to provide

the information needed for this report, they should maintain a log and retain source documents that support and summarize the decisions. Below is the report format provided to the Board Members. The SUTD designees will use this report format to submit the district's or section's calendar year data to the Supervisor of the Audit Support Unit by January 31<sup>st</sup> each year. Detailed account information may be requested by the Board Members at any time, so designees should be prepared to furnish more details as requested.

A request has been submitted to TSD to develop programming that would generate a new report to capture most of the needed information from IRIS. When this is completed, designees will be notified that this manual reporting system may be discontinued.

Interest Relief Requests  
District or Section Name  
January 1, 2005 Through December 31, 2005

Range	Cases Approved		Cases Denied		Cases Pending		Total Cases	
	Count	Dollars	Count	Dollars	Count	Dollars	Count	Dollars
\$0 to \$1,000								
\$1,001 to \$5,000								
\$5,001 to \$25,000								
\$25,001 to \$50,000								
\$50,001 to \$200,000								
\$200,001 to \$500,000								
over \$500,000								
<i>Totals</i>								

The designees listed above will prepare a memo to the appropriate Headquarters section if they do not have the capability to make the required adjustments to IRIS. This memo is required for denials as well as approvals. It should be sent to the supervisor of the Petitions Section for requests involving Board-assessed determinations (audits, FBOs), or to the supervisor of the Return Analysis Unit for self-assessed (tax return) related adjustments. These units have the ability to make adjustments in IRIS. In addition to any dollar adjustments resulting from relief granted, the DIF RR sub-system will be updated to indicate if the relief request (RR) was granted or denied using the reason code UED (Unreasonable Error or Delay).

If the memo discussed above is necessary to update IRIS, it should identify the account by name and number, state whether the request has been granted or denied with a brief reason, the dollar amount of any adjustment, the tax period involved, and the interest from/to dates. This information is especially helpful in situations where only a portion of the requested interest relief amount is granted. The memo is to be signed and dated by the appropriate designee. A copy of the memo should be sent to the Taxpayer Records Unit (MIC 36) with the account number clearly identified. Copies of memos related to consumer use tax accounts should be sent to the files maintained by CUTS (MIC 37) instead of the Taxpayer Records Unit.

Designees having the capability to update IRIS do not need to prepare this memo. They will, however, ensure that IRIS adjustments are made for any relief granted and that the relief request is marked as approved or denied.

The Field Support and Evaluation Unit will add section 6593.5 responses to the district evaluation program. They will review the logs maintained by the designees and make an initial evaluation of the interest relief responses. They will evaluate the responses to ensure the legal requirements are consistently applied and any corrective actions to prevent a recurrence of the unreasonable error or delay have been implemented.

#### Property and Special Taxes Department (PSTD)

The Deputy Director, Property and Special Taxes Department, delegates the authority to approve or deny these requests to the appropriate Division Chief or their designee. The Division Chief or designee will make the decision to grant or deny relief in their area of responsibility, notify the tax or fee payer, and make or request the necessary updates to the IRIS or Teale system. The designees will maintain a log summarizing their decisions. This will be used for statistical purposes and in the preparation of the year-end report to the Board Members. The year-end report will be in the same format used by SUTD. The PSTD annual report will be provided to the Audit Support Unit in SUTD by January 31<sup>st</sup> of each year.

### **F. Interest Relief on the Integrated Revenue Information System**

In cases where the audit has not been billed, the memo from the Deputy Director or designee will authorize relief of interest where appropriate and the SUTD district office, or PSTD division, will include the adjustment as part of the audit report. In cases where the audit has been billed, approved relief requests will be forwarded through the normal adjustment channels, similar to penalty relief. Copies of the reply from the Deputy Director or designee are to be included in the audit working papers. Relief of interest on other types of liabilities (i.e., returns) will be adjusted by the appropriate headquarters section in the manner similar to penalty relief.

IRIS users who are authorized to make adjustments may select the period of interest to abate through the difference subsystem (DIF RR). Users may select a partial period or the entire period. The reason code of UED (Unreasonable Error or Delay) has been established for this purpose. When interest is relieved for only a portion of the taxable measure, a manual calculation of the interest amount may be required. This amount can be entered through the Legal Adjustment (LA) screen in the Difference (DIF) subsystem. A year-end summary of UED adjustments made on the LA screen will be downloaded from the DIF AL system by the Audit Support Unit.

## **G. Requests for Reconsideration**

The following is designed (1) to inform tax and fee payers that they may request reconsideration of denied interest relief, and (2) to include the Deputy Director's review and approval of interest relief requests that are denied following reconsideration.

### Reconsideration of Requests Over \$50,000

The Deputy Director will review the final recommendation on all relief of interest requests above \$50,000 that are denied prior to the case being approved for placement on the Board calendar. If the Deputy Director agrees with staff's recommendation to deny the request for relief of interest, the Deputy Director will send a letter notifying the taxpayer that the recommendation to deny the request for relief will be submitted to the Board Members. The letter will also include the anticipated date the Board Members will consider the request.

### Reconsideration of Requests Between \$5,001 and \$50,000

The Deputy Director will review the staff recommendation and make the final decision for reconsideration requests between \$5,001 and \$50,000.

### Reconsideration of Requests for \$5,000 or Less

In the letter notifying the taxpayer their interest relief request has been denied, the headquarters section or district office will include a statement explaining that the decision to deny relief may be reconsidered if the taxpayer provides new information within 15 days. The letter will also explain that if the taxpayer provides additional information and their request for relief is still denied by Board staff, their request for relief will then be reviewed by the Deputy Director. Staff should not regard the 15-day period as absolute – staff may still consider information received after 15 days. The 15-day period was included to set a reasonable deadline.

If the Deputy Director agrees with staff's recommendation to deny the request for relief of interest, the Deputy Director will send a letter to the taxpayer indicating agreement with staff's recommendation.

### Further Appeals

If the tax or fee payer disagrees with a denial after their request for reconsideration, they should be referred to Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, for additional information.

## **III. OBSOLESCENCE**

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.



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